

ENTERED

May 15, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

JOSE LUIS AGUILAR-MORFIN
Petitioner-Defendant

VS.

UNITED STATES OF AMERICA
Respondent-Plaintiff

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CIVIL ACTION NO. M-14-978

CRIMINAL NO. M-12-1317-1

ORDER ADOPTING REPORT AND RECOMMENDATION

Pending before the Court is Petitioner-Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255, which motion had been referred to the Magistrate Court for a report and recommendation. On March 24, 2017, the Magistrate Court issued the Report and Recommendation, recommending that Petitioner-Defendant's Unopposed Motion for Nonsuit be granted, and that Petitioner-Defendant's section 2255 motion be dismissed without prejudice, and that a Certificate of Appealability be denied upon the issuance of this Court's final order. The time for filing objections has passed, and no objections have been filed.

Pursuant to Federal Rule of Civil Procedure 72(b), the Court has reviewed the Report and Recommendation for clear error.¹ Finding no clearly erroneous error, the Court adopts the Report and Recommendation in its entirety. Accordingly, Petitioner-Defendant's Unopposed Motion for Nonsuit (Dkt. Entry No. 17) is **GRANTED** and Petitioner-Defendant's section 2255 claims are **DISMISSED** without prejudice. A Certificate of Appealability is **DENIED**.

¹As noted by the Fifth Circuit, "[t]he advisory committee's note to Rule 72(b) states that, '[w]hen no timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Douglas v. United Services Auto. Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996)(quoting Fed. R. Civ. P. 72(b) advisory committee's note (1983)) *superceded by statute on other grounds* by 28 U.S.C. § 636(b)(1), *as stated in* *ACS Recovery Servs., Inc v. Griffin*, No. 11-40446, 2012 WL 1071216, at *7 n.5 (5th Cir. April 2, 2012).

SO ORDERED this 15th day of May, 2017, at McAllen, Texas.

A handwritten signature in black ink, reading "Randy Crane". The signature is written in a cursive, slightly stylized font. The "R" is large and loops around the "a", and the "C" is also large and loops around the "r". The "e" is written with a simple horizontal stroke.

Randy Crane
United States District Judge